ISSUE DATE: April 9, 1998

DOCKET NO. P-443,3012/PA-97-1532

ORDER APPROVING MERGER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Gregory Scott	Commissioner

Joint Petition of WorldCom, Inc. and MCI Communications Corporation for Approval of the Acquisition of All the Outstanding Shares of Stock of MCI by WorldCom

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PROCEDURAL HISTORY

On October 17, 1997, WorldCom, Inc. filed a petition for authority to acquire control of MCI Communications Corporation. Two MCI subsidiaries are currently certified to provide telecommunication services in Minnesota. MCI Telecommunications Corporation is certified to provide long distance services and MCImetro Access Transmissions Services, Inc. (MCIm) has received a conditional certificate to provide local service in specified areas of Minnesota. At the time of the filing, WorldCom had announced that it would be making a tender offer for all the outstanding stock of MCI.

On November 6, 1997, GTE Corporation (GTEC) and Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE-Minnesota) jointly filed a petition to intervene in the docket, stating that both companies have an interest in the matter that cannot be adequately represented by another party.[1]

On November 18, 1997, WorldCom and MCI filed comments opposing the intervention of GTEC and GTE-Minnesota. Noting that GTEC had also made an offer to acquire MCI, WorldCom and MCI argued that the GTEC offer should have no bearing on the consideration of the WorldCom acquisition of MCI and that, as a local service provider, the interests of GTE-Minnesota will be well represented by the Department of Public Service.

On November 26, 1997, WorldCom and MCI jointly filed supplemental information and advised

[1] GTEC is a New York corporation that owns all the issued and outstanding stock of GTE-Minnesota. GTE-Minnesota is an incumbent local exchange carrier (ILEC) providing intrastate local exchange and exchange access telecommunications to approximately 117,000 access lines in Minnesota. Hereafter in this Order, GTE Corporation (GTEC) and Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE-Minnesota) may be referred to collectively as GTE.

the Commission that they had entered into an Agreement and Plan of Merger. They requested that the filing be considered a joint request for approval of the transfer of control of MCI to WorldCom.

On December 1, 1997, GTE Communications Corporation (GTE-CC) filed a petition to intervene. GTE-CC is an affiliate of GTEC and GTE-Minnesota. GTE-CC is authorized to provide interexchange calling in Minnesota and has applied to act as a competitive local exchange provider (CLEC).

On the same date, December 1, 1997, GTE filed comments supporting intervention for the parent company (GTEC) and the two affiliates: GTE-Minnesota and GTE-CC.

On December 17, 1997, the Department filed comments regarding the proposed merger. The Department concluded that the acquisition of MCI by WorldCom would not adversely affect the financial condition or ability to provide service of the certificated MCI companies, and recommended that the merger be approved.

On December 29, 1997, the three GTE affiliates that had requested intervention (collectively GTE) filed additional comments responding to the Department's recommendation. GTE believed that there are a number of public interest issues raised by the proposed merger and requested that the Commission conduct a contested case proceeding to consider these issues.

On January 20, 1998, WorldCom and MCI filed comments responding to GTE’s December 29 comments. WorldCom and MCI argued that no issues raised by GTE warrant a contested hearing and that the Commission’s focus in considering the merger, under Minnesota Statutes, should be on the Companies’ managerial, technical, and financial capabilities to continue providing service to Minnesota customers.

On February 24, 1998, GTE filed comments addressing Commission Staff briefing papers which had been distributed to all parties on February 12, 1998.

On March 2, 1998, MCI and WorldCom filed comments objecting to the Commission's consideration of GTE's February 24 filing. The parties also submitted a response to GTE's comments in the event the Commission admitted GTE's filing into the record.

The Commission met on March 5, 1998 to consider this matter.

FINDINGS AND CONCLUSIONS

I. LATE-FILED COMMENTS NOT ACCEPTED

WorldCom's October 17, 1997 filing is classified as a miscellaneous tariff as that term is defined in Minn. Rules, Part 7829.0100, subp. 11. As such, the extent and the timetable for receiving comments regarding WorldCom's filing are governed by Minn. Rules, Part 7829.1400.

Minn. Rules, Part 7829.1400 authorizes initial comments and reply comments within specified time periods. Initial comments may be filed within 30 days of the filing and reply comments may be filed within 10 days of the end of the time for receiving initial comments. Additional comments are authorized only if the Commission determines that it needs "further information" to make a fully informed decision. No additional comment period is triggered by the distribution of Commission Staff briefing papers to the parties.

In this case, GTE elected not to file comments on WorldCom's October 17, 1998 petition, but instead filed two petitions to intervene: one on behalf of GTE Corporation and Contel of Minnesota, Inc. d/b/a GTE Minnesota (November 6, 1997) and one on behalf of GTE Communications Corporation (December 1, 1997). In addition, GTE filed reply comments in this matter on December 29, 1997.

In terms of the Commission's rules, GTE's February 24, 1998 comments are "additional comments" and, as such, may only be allowed, pursuant to Minn. Rules, Part 7829.1400, Subp. 5 if the Commission believes that further information is required to make a fully informed decision.

In this case, the additional comments filed by GTE were not requested ("required") by the Commission, as the rule indicates is the proper way for any such comments to be initiated. In addition, the Commission finds that GTE's additional comments simply reargue positions taken in previous filings in this matter and consequently do not add "further information" within the meaning of the rule. The principal variant in GTE's February 24, 1998 filing is that it now disagrees on these issues with Commission Staff as well, rather than simply with the Department, WorldCom, and MCI. This information is not the kind of "further information" within the meaning of Subpart 5 that must be in written form to allow the Commission to make a fully informed decision in this case. Accordingly, the Commission will not accept GTE's late-filed comments into the record.

Under a similar analysis, the late-filed comments of WorldCom/MCI responding to GTE's late-filing (March 3, 1998) will not be accepted into the record.

II. INTERVENTION DENIED

On November 6, 1997, GTE Corporation (GTEC) and Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE Minnesota) filed a petition requesting intervention status for each of these entities.
On December 1, 1997, GTE Communications Corporation (GTE-CC) also filed a petition to intervene.

This section of the Order will address the intervention requests of each of these three entities: GTEC, GTE-Minnesota, and GTE-CC.

A. GTE Corporation (GTEC)

1. GTEC's Petition to Intervene

GTEC claimed to have an interest peculiar to itself that cannot be adequately represented by another party. GTEC explained that on October 15, 1997, it announced it had made an offer to acquire control of MCI. Because of this, GTEC asserted, it had a direct and palpable interest and right to participate in this proceeding to address

- whether WorldCom's proposed offer to acquire MCI is in the public interest and
- whether GTEC's competing offer provides additional and enhanced benefits to Minnesota consumers and the telecommunications industry generally.

2. WorldCom and MCI's Comments Re: GTEC's Request to Intervene

In their initial response to GTEC's request to intervene, WorldCom and MCI denied that GTEC had a legitimate, unique interest to protect in this proceeding. In this proceeding, according to WorldCom and MCI, the Commission's purpose is to review the proposed transaction (the proposed WorldCom/MCI merger) to determine whether it is in the public interest. WorldCom and MCI argued that GTE's interest in continuing to promote its merger bid for MCI (by seeking Commission involvement in an evaluation of the comparative merits of the WorldCom and GTE proposals) was not a legitimate or relevant interest in the context of this matter. Regarding the specific task before the Commission (to determine whether WorldCom's merger with MCI is consistent with the public interest of the citizens of Minnesota), WorldCom and MCI argued that GTE's status as a potential offeror is simply not relevant and for purposes of the relevant issue the interests of the citizens of Minnesota will be adequately represented by the Department.

In subsequent written comments and at the hearing, WorldCom and MCI attacked GTEC's credibility as to its asserted interests in this matter. WorldCom and MCI asserted that GTEC, as a competing and unsuccessful bidder, was less concerned about the public interest benefits of the proposed transaction than it was about 1) impeding this transfer, 2) taking advantage of this regulatory proceeding to obtain proprietary information from its competitors, and 3) protecting its dominant position in the telecommunications market.

WorldCom and MCI requested the Commission deny GTEC's petition to intervene. If the Commission granted GTE party status, WorldCom and MCI argued, GTEC should be limited to commenting on issues related directly to the public interest of WorldCom's petition, without any reference to GTEC's competing offer to acquire MCI.

3. The Department

The Department filed no written comments regarding GTEC's request for intervener status, but at the hearing generally adopted the position of WorldCom and MCI.

4. Commission Analysis and Action Re: GTEC's Request to Intervene

Minn. Rules, Part 7829.0800, Subp. 2 sets forth the grounds for intervention, requires that the petition allege the grounds for intervention, and states that the petition must be granted if one of the grounds is shown. At the hearing, the GTEC representative argued that the following grounds applied to GTEC:

- the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or

- the person's interests are not adequately represented by one or more other parties participating in the case.

As provided in Minn. Rules, Part 7829.0800, subd. 2, the Commission looks to GTEC's petition to intervene for the expression of its asserted grounds to intervene. Though not required to do so, the Commission has also reviewed GTE's subsequent December 1, 1997 filing which is, in part, in support of GTEC's petition to intervene. In addition, the Commission has considered GTE's oral arguments at the hearing on this matter.

a. Binding or affecting with respect to a peculiar interest

The Commission finds that GTEC has not articulated, let alone shown, that it would be bound or affected by the approval or disapproval of the proposed merger in a way peculiar to GTEC. GTEC would not be "bound" to do anything as a result of the Commission's approval or disapproval of the WorldCom/MCI merger. And since there is no relationship between GTEC and MCI at this time, GTEC has no recognizable relationship with (claim against) MCI that could be "affected" by a decision to approve the merger.

Regarding GTEC's expressed interest in seeing that WorldCom's proposed offer to acquire MCI receives a proper public interest evaluation, the Commission notes that this interest is certainly not unique to GTEC and, as this Order shows, GTEC's intervention was not required to procure such a review. See discussion below regarding the merits (public interest evaluation) of the WorldCom/MCI merger.
Moreover, in light of GTEC's status as the parent (sole owner) of GTE-Minnesota (an ILEC), it is

difficult for the Commission to accept at face value GTEC's asserted interest in making sure that any consummated merger promotes competition in the local market, i.e. competition with its subsidiary, GTE-Minnesota. It is particularly difficult to accept GTEC's expressed pro-local competition interest as sincere since until a few months ago GTEC (which now opposes the WorldCom/MCI merger on grounds that it will reduce competition in the local market) sought to merge with MCI itself, a merger which would undoubtedly have eliminated MCIm as GTE-Minnesota's competitor. Given GTEC's perceived self-interest, GTEC is a questionable standard-bearer for competition in the local market.

b. Inadequate representation

In its petition, GTEC stated that it desired to assist the Commission in determining whether GTEC's competing offer provides additional and enhanced benefits to Minnesota consumers and the telecommunications industry generally. However, this issue (alleged superiority of GTEC's offer) is not relevant to the Commission's public interest evaluation of the WorldCom/MCI merger. Consequently, any inadequacy of representation of GTEC's interest in this issue is irrelevant and does not justify intervention in this proceeding.

B. GTE-Minnesota

1. GTE-Minnesota's Petition to Intervene

In its petition, GTE-Minnesota described itself as an incumbent local exchange carrier (ILEC) actively involved in the local services market in Minnesota , the place where WorldCom stated it would create more competition. GTE-Minnesota asserted that it had an interest peculiar to itself that cannot be adequately represented by another party. GTE-Minnesota stated that because it was currently active in the local services market had a unique interest (and right) to participate in this docket so that it can assess 1) whether the benefits of competition would ever come to fruition and 2) whether the proposed acquisition would be beneficial to the public.

In subsequent written comments filed December 1, 1997, GTE-Minnesota argued that the Department was not empowered or qualified to represent the interests of local telephone companies such as GTE-Minnesota.

GTE-Minnesota also asserted that it had a unique and substantial interest in the outcome of the merger application. GTE-Minnesota asserted that the fact that the merged entity intends to compete against GTE-Minnesota for local business gives GTE-Minnesota a **peculiar interest** that requires that its petition to intervene be granted. GTE-Minnesota also asserted that because it is a separate and distinct member of the public which will be affected by this transaction, it is entitled to present its views to the Commission.

GTE-Minnesota also volunteered to speak on behalf of its customers, claiming that it had valuable insights on how the merger would affect them and asserting that the potential impact of the merger on GTE-Minnesota's customers would be "far reaching."

Finally, GTE-Minnesota stated that the merger has the potential of minimizing competition in the local exchange service area which it suggested would have a material negative effect on its local service business.

2. WorldCom and MCI's Comments Re: GTE-Minnesota's Request to Intervene

WorldCom and MCI stated that GTE-Minnesota claimed a "unique interest and right", as an incumbent provider of local services in Minnesota, to participate to present its views on whether the transaction would be beneficial to the public interest. WorldCom and MCI asserted, however, that GTE-Minnesota did not raise any specific public interest issues with regard to WorldCom's petition. Moreover, WorldCom and MCI asserted, the interests of the citizens of Minnesota and carriers like GTE would be well considered by the Department in making its recommendation to the Commission.

WorldCom and MCI requested the Commission deny GTE-Minnesota's petition to intervene. If the Commission granted GTE party status, WorldCom and MCI argued, GTE -Minnesota should be limited to commenting on issues related directly to the public interest of WorldCom's petition.

3. The Department

The Department filed no written comments regarding GTEC's request for intervener status, but at the hearing generally adopted the position of WorldCom and MCI.

4. Commission Analysis and Action Re: GTE-Minnesota's Request to Intervene

As previously noted, Minn. Rules, Part 7829.0800, Subp. 2 sets forth two potentially applicable grounds for GTE-Minnesota's intervention:

- the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or

- the person's interests are not adequately represented by one or more other parties participating in the case.

The Commission has looked to GTE-Minnesota's petition to intervene, its subsequent December 1, 1997 filing which is, in part, in support of its petition to intervene, and its oral arguments at the hearing on this matter.

a. Binding or affecting with respect to a peculiar interest

In its petition, GTE-Minnesota stated that it desired to participate in the docket so it could assess whether the purported benefits would ever come to fruition and whether the proposed acquisition would be beneficial to the public at large. Petition at page 3. In so doing, GTE-Minnesota simply stated an **intention** rather than identifying an **interest** in this matter.

Nor does the fact that the merged entity intends to compete against GTE-Minnesota for local business[2] give GTE-Minnesota a **peculiar interest** that requires that its petition to intervene be granted. The prospect of having to compete with the merged entity in the local market does not give GTE-Minnesota an "interest" (peculiar or otherwise) within the meaning of the rule. Indeed, GTE-Minnesota has no legitimate interest in avoiding competition in its local exchanges. From another perspective leading to the same conclusion, the focus in this proceeding is whether the merger is in the public interest; GTE-Minnesota's apparent desire to impede the merger and thereby avoid competition in the local market does not amount to a public interest concern.

In a confusing and contradictory vein, GTE-Minnesota later argued the opposite as well: that the merger had at least the potential of **minimizing** competition in the local exchange service arena by eliminating WorldCom as a potential local competitor. Reply Memorandum filed December 1, 1997 at page 4. However, as an ILEC GTE-Minnesota has no recognizable interest in promoting WorldCom as a competitor in GTE's local exchanges.

Finally, GTE-Minnesota will not be "bound" (legally obligated) to do anything as a result of the Commission's approval or disapproval of the WorldCom/MCI merger. Whether GTE-Minnesota acts differently in any manner in response to the merged entity is entirely voluntary.

b. Inadequate representation

GTE-Minnesota stated that it desired to participate in the docket so it could assess whether the purported benefits of merger would ever come to fruition and whether the proposed acquisition would be beneficial to the public at large. November 6, 1997 Petition at page 3.

No inadequate representation of GTE-Minnesota on these concerns is indicated. First, GTE-Minnesota has no particular charge, standing, or perceived self-interest to watch-dog its articulated concerns. Second, these concerns are common to the general ratepayers and, hence, are properly represented by the Department.

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[2] See GTE-Minnesota's Petition at page 2.

C. GTE Communications Corporation (GTE-CC)

1. GTE-CC's Request to Intervene

In its December 1, 1997 petition, GTE-CC asserted that as a Minnesota certificated interexchange carrier (IXC) with a pending CLEC petition, it had an interest in this docket peculiar to itself that cannot be adequately represented by another party.

GTE-CC stated that as a reseller of long distance service, it currently purchases long distance capacity from WorldCom. GTE-CC also noted that the merged entity proposes to compete in the local market and, hence, will be a competitor of GTE-CC in the local market once GTE-CC gets certified as a CLEC.

Like GTE-Minnesota, GTE-CC stated that it sought to intervene so it could assess whether the purported benefits of merger would ever come to fruition and whether the proposed acquisition would be beneficial to the public at large. December 1, 1997 Petition at page 3. In the December 1, 1997 "Reply Memorandum", GTE-CC asserted that as a customer of WorldCom for wholesale long distance service, a competitor to MCI in the retail interexchange market, and soon-to-be CLEC competitor to the merged entity in the local market, it had a "set of perspectives" which are not represented in this proceeding and which (in GTE-CC's view) clearly had "a bearing on the issues that will be presented to the Commission." GTE's Reply Memorandum filed December 1, 1997, at page 3.

GTE-CC also asserted that it was entitled to present its views to the Commission because it was a separate and distinct member of the public which will be affected by the merger. Reply Memorandum at page 3.

Finally, while GTE-CC asserted generally that the proposed transaction would have a "material effect" upon its business, it was not specific regarding how that would affect GTE-CC. GTE-CC merely stated that the merger "may" result in higher costs for resellers such as itself and remove WorldCom as a "check against coordinated interaction on the part of AT&T, MCI, and Sprint." Reply Memorandum at page 4.

2. WorldCom, MCI and the Department

Neither WorldCom, MCI or the Department filed an objection or comments regarding GTE-CC's petition to intervene. At the hearing, WorldCom and MCI opposed GTE-CC's petition on grounds generally applicable to GTEC and GTE-Minnesota and did not identify defects unique to GTE-CC's intervention claim. At the Hearing, the Department concurred with the WorldCom/MCI position.

3. Commission Analysis and Action

GTE-CC's petition will be denied. It is not self evident that its status as an IXC purchaser of long distance service from WorldCom and its potential to become a competitor with WorldCom/MCI in the local market gives it an interest that will be bound or affected by the merger in a peculiar manner. GTE-CC presents nothing in its petition to support this bare assertion. Nor does GTE-CC's expressed desire to participate in this docket so it can assess whether the merger benefits will ever come to fruition and whether the proposed acquisition will benefit the public at large give it such an interest. Finally, there is nothing in the record to show that GTE-CC must be allowed to intervene so that its non-unique public interest concerns can be appropriately considered.

The Commission has also reviewed the arguments raised in the December 1, 1998 Reply Memorandum. The Commission finds these arguments speculative and ultimately unpersuasive:

- GTE-CC's perspectives as an IXC and potential CLEC do not have a unique bearing on the issues relevant to a determination of this matter.

- Among the dangers speculated about by GTE-CC is that the merger "may" result in higher costs for resellers of IXC service and higher prices for consumers. Reply Memorandum" at page 4. The lack of specific support provided by GTE-CC for its anti-competitive speculations convinces the Commission that GTE-CC's expressed fears are unwarranted.

- Being a "separate and distinct member of the public" does not give a person a right to intervene. Reply Memorandum" at page 4.

- Nor does GTE-CC's expressed willingness to speak on behalf of its customers' interests give it such a right.

- Finally, GTE-CC did not show that anti-competitive illegal interaction on the part of AT&T, MCI and Sprint is the inevitable result of the merger. If such activity does occur, GTE-CC is entitled to bring a complaint before the Commission in another proceeding regarding any such activity. Intervention in the merger proceeding is not required.

Because grounds for GTE-CC's intervention have not been shown, the Commission will deny GTE-CC's petition.

D. Participant Status

Notwithstanding the denial of their requests for intervener status, GTEC, GTE-Minnesota, and GTE-CC have had participant status throughout this matter. As participants, these companies have been allowed to present their views in writing and orally at the hearing, to argue their positions and to respond to arguments of other parties. Further, as this Order demonstrates, the companies have had their views taken into consideration by the Commission.

III. THE MERITS OF WORLDCOM/MCI'S PETITION TO MERGE

A. WorldCom/MCI Comments

In its petition, WorldCom asserted several public interest considerations in support of its merger with MCI. In general, WorldCom stated that telecommunications customers, shareholders, and the general public will realize significant benefits from the merger.

WorldCom noted that the companies shared a similar history and orientation as pioneers in the introduction of competition to the telecommunications marketplace. Specifically, WorldCom argued that the proposed merger was in the public interest for two main reasons:

1. Pro-competition impact of merger

WorldCom/MCI argued that the two companies combined would accelerate competition, especially in local markets, by creating a company with the capital, marketing abilities, and state-of-the-art network to compete against incumbent carriers. WorldCom cited its current domestic local networks with an established, facilities-based presence in over 50 U.S. metropolitan areas and predicted that these would greatly accelerate MCI's local services entry strategy and result in significant savings, efficiencies, and economies of scale and scope for the combined company. WorldCom argued that by creating a more effective and multi-faceted carrier in the local exchange sector, the proposed merger would significantly enhance competitive choice for U.S. telecommunications customers, including in the State of Minnesota.

2. No anti-competitive downside to merger

WorldCom asserted that there was no significant likelihood that the combination of WorldCom and MCI would eliminate or retard competition and claimed that the results would be only pro-competitive. WorldCom noted that WorldCom and MCI controlled no bottleneck facilities nor had they market power in any telecommunications service. WorldCom noted that the industry segment in which their combined market shares will be the largest (long distance services) is the sector that is the most competitive.

Subsequently, in a letter dated January 16, 1998, WorldCom and MCI argued that the standard for determining whether a merger is consistent with the public interest focuses on the impact of the proposed transactions on the financial positions of the companies as it relates to their ability to continue to provide telecommunications services to Minnesota customers. WorldCom and MCI stated that the Department and the Commission have determined that the proper scope of review for a merger of two non-dominant telecommunications companies such as WorldCom and MCI focuses on the managerial, technical, and financial capabilities to continue to perform existing authorized services on those same terms and conditions. WorldCom and MCI argued that since no dispute exists as to the ability of MCI's two certificated companies to continue to serve their customers in Minnesota, the matter was ripe for Commission approval.

B. GTE's Comments

1. Standard of Review

GTE stated that before approving a proposed merger the Commission must determine that the merger is "consistent with the public interest." GTE stated that in considering public interest concerns, the Commission must recognize that the Telecommunications Act of 1996 as well as Minnesota Statutes and Rules have raised the advancement of competition to the level of a "public interest." In short, GTE urged the Commission to consider the competitive effects of the merger on the telecommunications market in Minnesota.

2. Determining Consistency With Public Interest

GTE argued that it would be premature to decide whether the merger was consistent with the public interest before conducting a contested case proceeding. GTE asserted that there were several unanswered issues that could have "significant impact on the public interest" and should be addressed in a contested case proceeding.

The two general categories of issues requiring exploration in a contested case, according to GTE, were: 1) the potential effect of the merger on competition in both the interexchange and local exchange service markets; and 2) the potential effect of the merger on rates and services in both interexchange and local service areas as well as on the customers who currently purchase wholesale interexchange services from WorldCom.

C. The Department's Comments

The Department recommended that the Commission approve the merger as specified in the companies' Agreement and Plan of Merger dated November 9, 1997.

The Department stated that it had reviewed the financial statement filed by WorldCom and MCI with the Securities and Exchange Commission (SEC) in the September 30, 1997 Form 10-Q. The Department concluded that the merger of WorldCom and MCI will not adversely affect the financial positions of the companies. The Department noted that MCI's two certificated companies, MCI Telecommunications Corporation (MCIT) and MCImetro Access Transmissions Services, Inc. (MCImetro), will continue to operate after the merger and provide services independently under existing tariffs and current rates in compliance with their Certificates of Authority.

At the hearing, the Department opposed GTE's request for a contested case hearing, noting that in the months following its initial assertion that the merger might hurt competition in the interexchange and local service markets GTE had provided no supporting evidence.

D. The Commission's Analysis and Action

1. Legal Standard

The Commission has authority under Minn. Stat. § 237.74, subd.12 to approve or deny WorldCom and MCI's request for Commission approval of the transfer of control of MCI to WorldCom. Minn. Stat. § 237.74, subd.12 states:

> No telecommunications carrier shall construct or operate any line, plant or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

To clarify, there is no basis for reducing the scope of the Commission's public interest inquiry to simply examining whether the certificated companies will continue to have the financial ability to serve their customers in Minnesota, as WorldCom and MCI have suggested in their January 16, 1998 comments. Other issues bearing on the public interest, such as the impact on ratepayers and competition in general, as argued by GTE, are also relevant to the analysis.

2. Nature of Commission Inquiry: No Contested Case Warranted

Evaluation of mergers, such as the one proposed by WorldCom and MCI, must, of necessity, be somewhat speculative. The merger, if approved, would take place in the future and no one knows with absolute certainty every effect the merger would have on the companies. Nevertheless, the Commission is charged with the duty and obligation of evaluating proposed mergers and, therefore, must weigh the Company's filing and any comments of the state agencies and other interested parties and apply the public interest standard in light of the information before it.

The only entities with party status in this matter (WorldCom, MCI and the Department) believe that the record is adequately developed to allow the Commission to make its public interest evaluation. Only GTE (a non-party) contended that further development of the record is appropriate. However, GTE did not place at issue any facts that a contested case could resolve. Instead of providing a factual basis for its predictions of anti-competitive and anti-ratepayer impacts of the merger, GTE simply posed questions and requested a contested case forum to explore those questions. Given the vagueness of GTE's assertions, the Commission finds it inappropriate to embark upon a contested case proceeding in a matter such as this. The Commission is prepared, on the record as developed to date, to make its public interest evaluation. Assuming for the sake of argument that GTE had been allowed to intervene and, therefore, had full party status in this matter, a contested case proceeding would still be unwarranted. The record is adequately developed to allow the Commission to resolve all the relevant issues. See Minn. Rules, Part 7829.1000.

3. Public Interest Determination

In determining whether the proposed transaction is "consistent with the public interest," the Commission weighs perceived detriments or concerns against perceived benefits to the public.

The major merger benefit predicted by WorldCom and MCI was that the two companies combined would accelerate competition, especially in local markets, by creating a company with the capital, marketing abilities, and state-of-the-art network to compete against incumbent carriers. Other results of the merger were essentially neutral, i.e. that the two MCI companies certificated in Minnesota would continue to operate separately and serve Minnesota customers.

The major detriments predicted by GTE were that the merger would have anti-competitive impacts on the local and interexchange markets and that the merger would have a negative impact upon rates and services in both interexchange and local service areas as well as on the customers who currently purchase wholesale interexchange services from WorldCom.

In this case, the premier public interest consideration debated by the merger proponents (WorldCom and MCI) and the merger opponent (GTE) was the predicted impact of the merger on competition in the local market. The Commission has a particular relationship to this public interest goal because the Minnesota legislature has identified fair and reasonable competition for local exchange telephone services as a priority public interest goal and has given the Commission major responsibilities for promoting that goal.

Given its understanding of the evolving dynamics of competition in the local market, the Commission finds that WorldCom/MCI's argument that merger will promote local competition more plausible than GTE's contention that the merger will reduce local competition.[3] The Commission finds it reasonable, as WorldCom/MCI have explained, that by creating a more effective and multi-faceted carrier in the local exchange sector, the proposed merger would significantly enhance competitive choice for telecommunications customers in the State of Minnesota.

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[3] The credibility of GTE's argument is further hurt by the fact that any reduction of competition in the local market (predicted and decried by GTE in this argument) would appear to serve GTE-Minnesota's interest as an ILEC, GTE-CC's interest as a CLEC, and GTEC's interest as parent (owner) of GTE-Minnesota and GTEC.

GTE's other concerns are either too speculative, more clearly the business of another regulating body, or could be addressed in another proceeding before the Commission. For example:

1. Asserted anti-competitive impact of the merger on the long distance market: speculative and more properly addressed by the FCC.

2. Prediction that AT&T, MCI and Sprint would engage in anti-competitive pricing once WorldCom's independence is eliminated: speculative, properly addressed to FCC or Commission as a complaint of discriminatory pricing or "prohibited practices" pursuant to Minn. Stat. § 237.121.

4. Conclusion on Merits

Based on its review, the Commission concludes that the WorldCom/MCI merger is consistent with the public interest and will, therefore, approve it.

ORDER

1. The proposed WorldCom/MCI merger is approved.

2. Within 10 days of the closing date, WorldCom and MCI shall file a joint affidavit of merger/acquisition completion.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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